City of Lafayette Staff Report

For:	City Council
By:	Tony Coe
	Niroop K. Srivatsa
Date Written:	May 4, 2009
Meeting Date:	May 11, 2009
Subject:	**Lafayette Impact Fees Analysis: Upgrading and Updating the Drainage and Walkways Fees**

Purpose

Conduct the public hearing, adopt Ordinance 583 amending Chapter 8-1 of the Lafayette Municipal Code relating to Walkways Impact Fees, Ordinance 584 amending Chapter 8-17 of the Lafayette Municipal Code relating to Drainage Impact Fees and Resolutions 2009-32 and 2009-33 setting the amount of these fees.

Background

The City Council held a public hearing on this matter on May 11, 2009 at which it introduced the two ordinances and continued the matter to May 26th for second reading and adoption of the resolutions. The two resolutions set the walkways and drainage impact fees and provide for an annual adjustment of the fees.

Recommendation

Adopt Ordinance 583 and Ordinance 584 and Resolutions 2009-32 and 2009-33.

Attachment

1. Ordinances 583, 584
2. Resolutions 2009-32 and 2009-33.

10B

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

A Resolution of the City Council of the City of Lafayette Setting Walkways Impact Fees	)))	Resolution 2009-32

WHEREAS, Chapter 8-1 of the Lafayette Municipal Code requires, as a condition of approval for a permit for new or expanded residential development, payment of a walkways impact fee;

WHEREAS, Lafayette Municipal Code section 8-133 provides that the City Council shall adopt regulations to establish fees, administration, procedures, implementation, and interpretation and policy to carry out Chapter 8-1; and

WHEREAS, pursuant to Government Code section 66001(a), anytime a fee is imposed as a condition of approval of a development project the City shall: (1) identify the purpose of the fee; (2) identify the use to which the fee will be put, and, if the use is financing public facilities, identify the facilities for which the fee is charged; (3) identify how the fee's use bears a reasonable relationship to the type of development project on which the fee is imposed; (4) identify how the need for the public facility bears a reasonable relationship to the type of development project on which the fee is imposed; and (5) determine that there is a reasonable relationship to the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed. A technical report dated March 2009, has been prepared by Seifel Consulting, Inc. that includes this information and is hereby adopted and incorporated herein by reference; and

WHEREAS, pursuant to Government Code Section 66016 et seq., the City has: (1) made data supporting the reasonableness of the fees available to the public at least at least ten days prior to its public hearing; (2) mailed notice at least fourteen days prior to the public hearing to all interested parties who have requested notice of new or increased fees; (3) published notice two times in a newspaper of general circulation at least ten days prior to the public hearing; and (4) held a duly noticed, regularly scheduled public hearing at which oral and written testimony was received regarding the proposed walkways impact fees.

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Definitions.

As used in this Resolution, unless context otherwise requires:

(a) "Additions" means the addition of at least 120 square feet of habitable area to a residential structure to accommodate additional resident(s).

(b) "Apartment" means a separate suite, including kitchen facilities, designed for and occupied as the home, residence or sleeping place of one or more persons living as a single housekeeping unit.

(c) "Condominium" means an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof.

(d) "Duplex" means a detached building or part of it, designed for occupancy as the residence of two families living independently of each other.

(e) "Exiting development" means development built on or before December 31, 2007.

(g) "Mobile Home" means units certified under the National Mobile Home Construction and Safety Standards Act of 1974, and any subsequent revisions thereto, and conforming to the requirements of Section 6-527 of the Lafayette Municipal Code.

(h) "New residential development" means and includes construction of, or an addition of, 120 square feet of habitable space, to a residential structure of facility occurring from the effective date of this Resolution.

(i) "Single Family Attached, Duplex" means a dwelling including one and only one kitchen, designed for occupancy as a residence of one family, located on a single lot of its own, but not surrounded on all sides by yard space.

(j) "Single Family Detached" means a dwelling including one and only one kitchen, designed for occupancy as a residence of one family, located on a single lot of its own, and surrounded on all sides by yard space.

(k) "Second Unit" means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons, as provided for in Section 6-560 of the Lafayette Municipal Code. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the primary unit is situated.

(l) "Walkways program costs" means the total cost of infrastructure facilities that the city anticipates will be needed to meet the needs of existing and future users, and includes the costs for walkways facilities and infrastructure as identified in the Masters Walkway Plan and the portion of the Aqueduct Trail, a regional multi-modal trail, designed for pedestrian use.

Section 2. Standards and Formula for Walkways Impact Fee.

(a) The walkways impact fee shall be determined at the time of building permit issuance and is calculated per dwelling unit type based on the percentage share of the walkways program costs allocated to new residential development, and the total projected resident population increase attributable to each dwelling unit type.

(b) To determine the percentage share of walkways program costs to be borne by new residential development, the distribution of existing and future residential population, based on the projected residential population at buildout was determined. Because approximately 8% of the City's total population at buildout will be generated by new residential development, new residential development will be responsible for eight percent (8%) of the City's walkways program costs.

(c) New residential development was estimated based on development potential on the City's vacant and underdeveloped land, as provided in the General Plan, and an estimate of second units constructed annually, based on recent development trends. The total projected resident population generated from new residential development is dependent on the type of dwelling unit. Therefore, a persons per household multiplier was applied to the projected number of new residential units by dwelling unit type to determine the total number of residents from new residential development. The walkways impact fee amount for additions is based on the fee levied on single-family detached dwelling unit divided by the average habitable space of a typical single-family home.

(d) A base walkways impact fee per user was then calculated by dividing the portion of walkways program costs to be borne by new residential development by the total number of projected new residents.

(e) The walkways impact fee by dwelling unit type was determined based on the projected new residential development, the persons per household multiplier by dwelling unit type, and the base fee per user.

The following table shows the resulting walkways impact fee per dwelling unit type for 2009:

Residential Dwelling Unit Type	Fee
Single family Detached	$1,076.22
Single Family Attached, or Duplex	$747.27
Apartments, Three or More Units	$650.59
Mobile Home	$635.56
Second Unit	$385.19

Section 3. Program Administration Fee.

In order to cover the administrative costs associated with the walkways impact fee, a program administration fee shall also be assessed on all new residential development in the amount set forth in the following table:

Residential Unit	Program Administration Fee for Walkways Impact Fee
Single Family Detached	$53.81
Single Family Attached or Duplex	$37.36
Apartments or Condominiums, three or more units	$32.53
Mobile Home	$31.78
Second Unit	$19.26
Additions	$0.03 per sf

Section 4. Annual Adjustment.

The walkways impact fee shall be adjusted annually effective July 1 of each year in order to keep pace with inflation of construction costs in the San Francisco Bay Area by being indexed to changes in the prior year's Construction Cost Index, published for the Bay Area by Engineering News-Record.

Section 5. Accounting.

The walkways impact fees and interest earned thereon shall be accounted for and maintained separately as required by the Mitigation Fee Act (Government Code Section 66000 et. seq.).

Section 6. Incorporation of Recitals.

The City Council of the City of Lafayette finds that the above recitals are true and correct.

Section 7. Effective Date. This Resolution shall become effective sixty (60) days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a meeting of said Council on _____, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Don Tatzin, Mayor

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

A Resolution of the City Council of the	)	
City of Lafayette Setting the Amount of	)	Resolution 2009-33
Drainage Impact Fees	)	

WHEREAS, Chapter 8-17 of the Lafayette Municipal Code requires, as a condition of approval for a permit for new or expanded development, payment of a drainage impact fee;

WHEREAS, Lafayette Municipal Code section 8-1709 provides that the City Council shall adopt regulations to establish fees, administration, procedures, implementation, and interpretation and policy to carry out Chapter 8-17;

WHEREAS, pursuant to Government Code Section 66001(a), anytime a fee is imposed as a condition of approval of a development project the City shall: (1) identify the purpose of the fee; (2) identify the use to which the fee will be put, and, if the use is financing public facilities, identify the facilities for which the fee is charged; (3) identify how the fee's use bears a reasonable relationship to the type of development project on which the fee is imposed; (4) identify how the need for the public facility bears a reasonable relationship to the type of development project on which the fee is imposed; and (5) determine that there is a reasonable relationship to the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed. A technical report dated March 2009, has been prepared by Seifel Consulting, Inc. that includes this information and is hereby adopted and incorporated herein by reference; and

WHEREAS, pursuant to Government Code Section 66016 et seq., the City has: (1) made data supporting the reasonableness of the fees available to the public at least at least ten days prior to its public hearing; (2) mailed notice at least fourteen days prior to the public hearing to all interested parties who have requested notice of new or increased fees; (3) published notice two times in a newspaper of general circulation at least ten days prior to the public hearing; and (4) held a duly noticed, regularly scheduled public hearing at which oral and written testimony was received regarding the proposed drainage impact fees.

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Definitions.

(a) "Drainage program costs" means and includes the total costs for drainage infrastructure and facilities that the City anticipates would be needed to meet the needs of existing and future users as identified in the City's Storm Drain Priority Report and estimated future costs not yet contemplated by the Storm Drain Priority Report, including additional infrastructure and annual inspections.

(b) "Impervious surface ratio" means the typical percentage or ratio of impervious surface to total lot size by land use.

(c) "New development" means and includes construction of or an addition to a residential or commercial structure or facility, including a driveway, parking area, sports court or swimming

pool, or any other construction which may affect the area of impervious surface of the land occurring after the effective date of this Resolution.

(d) "Storm Drain Priority Report" means a report completed in April 2007 by City staff which lists the proposed drainage projects and costs.

Section 2. Standards and Formula for Drainage Impact Fee.

(a) The drainage impact fee shall be determined prior to the time of building permit issuance and is calculated based on the total estimated development of impervious surface generated by each land use through 2030, divided by the total cost of drainage facilities needed through buildout, defined to be 2030.

(b) The City's General Plan presents the total developable land by land use categories that would occur through the City's buildout. The total developable land includes areas already developed as well as areas that will be developed and redeveloped in the future.

(c) The formula for calculating the drainage impact fee shall be as follows:

Drainage impact fee = (total square feet of developable land by land use × impervious surface ratio) ÷ drainage program costs

(d) Pursuant to the above formula, drainage impact fees shall be assessed on all new development that adds impervious surface at the rate of $0.52/square foot of impervious surface added.

Section 3. Program Administration Fee.

In order to cover the administrative costs associated with the drainage impact fee, a program administration fee shall be assessed on all new development that adds impervious surface at the rate of $0.03/square foot of impervious surface added.

Section 4. Annual Adjustments.

The drainage impact fee shall be adjusted annually effective July 1 of each year in order to keep pace with inflation of construction costs in the San Francisco Bay Area by being indexed to changes in the prior year's Construction Cost Index, published for the Bay Area by Engineering News-Record.

Section 5. Accounting.

The drainage impact fees and interest earned thereon shall be accounted for and maintained separately as required by the Mitigation Fee Act (Government Code Section 66000 et. seq.).

Section 6. Incorporation of Recitals.

The City Council of the City of Lafayette finds that the above recitals are true and correct.

Section 7. Effective Date. This Resolution shall become effective sixty (60) days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a meeting of said Council on _____, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

_____
Joanne Robbins, City Clerk

APPROVED:

_____
Don Tatzin, Mayor

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette Amending Chapter 8-1 of the Lafayette Municipal Code Relating to Walkways Impact Fees	)))	Ordinance No.583

WHEREAS, under California Constitution, Art. XI, Section 7, the City of Lafayette (the "City") has police power to impose conditions on development projects; and under California Government Code Sections 66000, et seq., the City may, by ordinance, impose a fee, such as a walkways impact fee, on any project for the purpose of defraying all or a portion of the cost of public facilities related to the development project as a condition of development;

WHEREAS, the City adopted its current walkways impact fee of $50.00 per dwelling unit in 1969, for the purpose of providing a comprehensive system of walkways, curbs and gutters in the City, has not updated it since that time, and desires to do so now to more accurately reflect the City's costs of providing that service (the "Walkways Impact Fee");

WHEREAS, in 1999 the City adopted a Master Walkways Plan, and revised it in 2006 ("the Master Walkways Plan"), the goal of which is to create a comprehensive system of walkways that afford safe and efficient pedestrian movement along roads and streets having significant foot and vehicular traffic, and that connect residential areas with public transportation, schools, community amenities, parks, City and regional trail systems, and the downtown;

WHEREAS, the purpose of the Walkways Impact Fee is to allow the City to generate sufficient revenue to meet the demand for walkways facilities and infrastructure generated by new residential development; ensure that existing walkways infrastructure will not become overburdened; and ensure that future development will bear its fair-share responsibility for the walkways system;

WHEREAS, the Walkways Impact Fee will be assessed on new residential development in the City because new residential development increases residential population which creates a corresponding increase in the use of the existing walkways facilities, and in the demand for additional walkways facilities, and will be differentiated among residential unit types to reflect the differences in walkways need each residential unit type is likely to generate;

WHEREAS, the Walkways Impact Fee will not be assessed on new commercial development because the majority of the walkways system is in residential areas, and all new non-residential development shall be required to mitigate its impacts on the walkways system as a condition of approval set forth by the Planning Commission or City Council;

WHEREAS, the City has estimated the total cost of the walkways improvements and facilities needed to accommodate future residential population identified in the Master Walkways Plan and has determined the proportion of those costs attributable to future resident population by determining the difference between the existing residential household population and the projected future residential population at buildout in 2030; and

WHEREAS, pursuant to Government Code Section 66016 et seq., the City has: (1) made available to the public at least ten days prior to its public hearing, data supporting the reasonableness of the Walkways Impact Fee; (2) mailed notice at least fourteen days prior to the public hearing to all interested parties who have requested notice of new or increased fees; (3) published notice two times in a newspaper of general circulation at least ten days prior to the public hearing; and (4) held a duly noticed, regularly scheduled, public hearing at which oral and written testimony were received regarding the proposed Walkways Impact Fee.

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Lafayette hereby approves the Walkways Impact Fee Report prepared by Seifel Consulting, Inc. for the City of Lafayette, dated _____, 2009 (the "Walkways Impact Fee Report"), as well as the facilities and estimated costs identified in the Master Walkways Plan for the City of Lafayette dated June 28, 1999, and revised February 27, 2006 (the "Master Walkways Plan.") The Walkways Impact Fee Report and the Master Walkways Plan are hereby incorporated by this reference for the purposes of supporting the findings below pursuant to California Government Code Section 66001, and further substantiating the Walkways Impact Fee.

Section 2. Findings. Pursuant to California Government Code Section 66001, et seq. the City Council hereby finds and determines as follows with respect to the Walkways Impact Fees:

a. The above recitals are true, correct, adopted by the City Council as if its own.

b. The Walkway Impact Fee Report and Master Walkways Plan satisfy the requirements of Government Code Section 66001, because they: (1) identify the purpose of the Walkways Impact Fee; (2) identify the use to which the Walkways Impact Fee will be put and the facilities for which the Fee is charged; (3) identify how the need for the Fee and the Fee's use bear a reasonable relationship to the type of development project on which the Fee is imposed; and (4) demonstrate that there is a reasonable relationship between the amount of the Walkways Impact Fee imposed on new development and the cost of walkways facilities attributable to new development.

Section 3. Amendments.

Section 8-113 of the Lafayette Municipal Code is hereby amended to read as follows:

"8-113 Requirements before acting upon applications for permits.

(a) The city shall not issue a land use, variance or building permit which requires installation of any frontage improvements, nor approve any major or minor subdivision or site plan and building elevations application which requires installation of any frontage improvements, until it first determines that such frontage improvements are consistent with the adopted Master Walkways Plan.

(b) Except as to building permits for construction, remodeling or alterations having a value as estimated by the city of less than 50 percent of the assessed value of the land and improvements on the current assessment roll, and to the extent permitted by law, the agency of the city acting upon application or request for a land use permit, variance, major or minor subdivision, site plan and building elevations approval, change in land use or building permit, which does not include frontage improvements in the application, shall impose upon the application or owner as a condition of granting it:

(1) The conveyance to the city of land necessary for the required frontage improvements; and

(2) The construction at the owner's expense of abutting frontage improvements described in the Master Walkways Plan; or

(3) The contribution in cash of a sum equal to the cost of construction of frontage improvements, had the same been required under subsection (b)(2) above (as estimated by the city), (to the frontage improvements trust account for that street on which the improvements are required.)

(c) A frontage improvement trust account shall be established for each street for which there is an approved highway or drainage plan. The balance in such account shall be used to defray part of the cost of the planned frontage improvements at the time they are constructed by the city. If an assessment district is formed at the time the improvements are actually constructed, the lot or lots originally contributing to such account shall receive credit for the amounts contributed against the benefit assessment made against those lots.

(d) In addition to the foregoing, a walkways impact fee shall be levied per dwelling unit on all new residential

development, as more fully described in Article 4 of this chapter. The standards and formula for setting the walkways impact fee shall be set forth by resolution of the city council."

Article 4, of Chapter 8-1entitled Walkways Impact Fee, and containing Sections 8-131 is hereby added to the Lafayette Municipal Code to read as follows:

"Article 4. Walkways Impact Fee

8-131 Authority.

This article is adopted under Government Code Sections 66000 et seq., and the city's general police power.

8-132 Compliance with Master Walkways Plan.

The walkways facilities for which the payment of a walkways impact fee is required shall be in accordance with the Masters Walkways Plan and in furtherance of the circulation element of the city general plan.

8-133 Supplemental regulations.

The city council shall adopt regulations to establish fees, administration, procedures, implementation, interpretation and policy considered necessary or desirable to carry out this chapter by resolution.

8-134 Definitions.

In this chapter, unless the context otherwise requires:

"New residential development" means and includes construction of, or an addition of 120 square feet of habitable space to, a residential structure or facility.

"Master Walkways Plan" means the City of Lafayette Master Walkways Plan, adopted June 28, 1999 Appendices Revised February 27, 2006.

"Walkways" and "walkways facilities" mean any path intended primarily for pedestrian use that parallels or is directly associated with any street or road, and include sidewalks and all other improved pedestrian rights-of-way whose principal purpose is to provide suitable separation between vehicular and pedestrian traffic.

"Walkways program costs" means the total cost of infrastructure facilities that the city anticipates will be needed to meet the needs of existing and future users, and includes the costs for walkways facilities and infrastructure as identified in the Masters Walkway Plan and the costs for that portion of the Aqueduct Trail, a regional multi-modal trail, designed for pedestrian use.

"Walkways system" means the comprehensive system of walkways designed to afford safe and efficient pedestrian movement along roads and streets having significant foot and vehicular traffic, and to connect residential areas with public transportation, schools, community amenities, parks, city and regional trail systems, and the downtown as described in the Walkways Master Plan.

8-135 Fee Imposed – Amount.

A person who applies for a permit for new residential development shall pay to the city a walkways impact fee based upon the of the new development in an amount established by resolution of the city council.

8-136 Time of payment.

(a) The walkways impact fee shall be paid to the city before a person may begin new residential development. If the

new residential development requires a building permit or grading permit, the walkways impact fee shall be paid before issuance of the permit. Neither a Contra Costa County nor a city official may issue a building or grading permit until the required fee is paid.

8-137 Creation of Fund; fund administration and disposition of proceeds.

(a) The proceeds from the walkways impact fee and interest collected under this chapter shall be used only for the purposes of upgrading or expanding walkways facilities identified in the Master Walkways Plan as a result of demand on the walkways system created by new residential development, and studies related to the same.

(b) All walkways impact fees paid under this chapter and interest earned thereon shall be accounted for in a separate walkways fund by the city manager and held by the city only for the above-described purposes until committed by the city.

(b) The city may advance money from its general fund to pay the cost of walkways system maintenance and expansion necessitated by new development and reimburse the general fund for such advances from the walkways fund.

8-138 Administration fee.

An administration fee shall be charged to cover the administration costs associated with the walkways impact fee program. The administration fee shall be paid in conjunction, and at the same time, with the payment of fees as provided in this chapter. This administration fee shall be established by resolution of the city council.

8-139 Refund.

The walkways impact fee paid under this chapter shall be refunded on application of the fee payer if the payer shows to the satisfaction of the planning director that the new development did not occur and that the building permit is canceled, surrendered or expired.

8-140 Refunds of uncommitted walkways impact fees.

(a) Walkways impact fees collected under this chapter shall be committed within five years after the payment of such fees or the issuance of building permits on one-half of the lots created by a subdivision, whichever occurs later. If such fees are not so committed, the uncommitted portion of the walkways impact fee, and any interest accrued thereon, shall be distributed among the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis. For the purpose of this chapter, "committed" means that the fees have been encumbered by contract, conveyed, paid or allocated through the city council's adoption of a budget, for an identified walkways project or activity within the scope of Section 8-135.

(b) Except when administrative costs of refunding the unexpended revenues exceed the amount to be refunded, when sufficient funds have been collected as provided for in the Mitigation Fee Act, Section 66006(b)(1)(F) of the Government Code, to complete financing on incomplete city walkways facilities and the walkways facilities remain incomplete, the city shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the acquisition and installation of the walkways facilities will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the walkways impact fee, and any interest accrued thereon.

8-141 Exemptions.

(a) A permit to rebuild a dwelling unit damaged or destroyed by act of God, fire or other natural disaster, is exempt from this chapter if the permit to rebuild is applied for by the owner within one year of the damage or destruction

caused by the natural disaster. If the habitable area of the new unit exceeds that of the unit destroyed or damaged, then the owner shall pay the fee as if the increased area were an addition.

(b) This chapter does not apply to commercial or industrial subdivisions; nor does it apply to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building if that building is more than five years old and no new dwelling units are added.

(c) No fee is required for additions to residences of less than 120 square feet of habitable space."

Section 4. CEQA. The City Council finds that pursuant to Section 21080(b)(8) of the Public Resources Code, the California Environmental Quality Act ("CEQA") is not applicable this Ordinance because the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by this Ordinance are for the purpose of obtaining funds for capital projects, necessary to maintain service within existing service areas and/or service areas within the City.

Section 5. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this Ordinance.

Section 6. Effective Date. This Ordinance becomes effective s thirty (30) days after its adoption.

Section 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 8. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on _____, 2009 and was adopted and ordered published at a meeting of the City Council held on _____, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

_____
Joanne Robbins, City Clerk

APPROVED:

_____
Don Tatzin, Mayor

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette Amending Chapter 8-17 of the Lafayette Municipal Code Relating to Drainage Impact Fees	)))	Ordinance No. 584

WHEREAS, under California Constitution, Art. XI, Section 7, the City of Lafayette (the "City") has police power to impose conditions on development projects, and under California Government Code Sections 66000, et seq., the City may, by ordinance, impose a fee such as a drainage impact fee, on any project for the purpose of defraying all or a portion of the cost of public facilities related to the development project as a condition of development;

WHEREAS, the City adopted its current drainage impact fee of $0.10/square foot for any increase in the total impervious surface area attributable to new residential and commercial development, including expansions to new development (the "Current Drainage Impact Fee"), in 1985 for the purpose of funding a Citywide drainage study that would identify the drainage facilities needed to support existing and future new development (the "Drainage Master Plan"), and has not updated it since that time;

WHEREAS, the Drainage Master Plan, completed in 1998, identified and documented a list of proposed projects and their estimated costs needed to support existing and future new development in Lafayette;

WHEREAS, subsequent analyses by City staff have refined the list of proposed storm drainage projects and costs, with the most current list, the Master CIP Storm Drain Priority Report (the "Storm Drain Priority Report"), having been completed in April 2007;

WHEREAS, existing City drainage capacity cannot adequately accommodate the demand of anticipated development within the City, and in order to offset the impact of such development on the City's drainage system, drainage fees should be revised as identified in this Ordinance (the "Revised Drainage Impact Fee");

WHEREAS, the Revised Drainage Impact Fee will: (1) fund the City's continued efforts to update the Drainage Master Plan to better support the storm drainage needs of existing and new development and ensure that existing drainage infrastructure will not become overburdened; and (2) fund the costs of constructing the improvements identified in the Storm Drain Priority Report so that the City can provide and maintain a comprehensive system of drainage infrastructure and facilities to meet the additional demand on the system created by new development, and ensure that existing drainage facilities do not become overburdened;

WHEREAS, the Revised Drainage Impact Fee will be assessed on new and expanded development that adds impervious surface because drainage infrastructure needed for storm drainage is a function of land area and the larger the impervious surface created, the greater the demand for drainage facilities to manage runoff;

WHEREAS, pursuant to Government Code Section 66016 et seq., the City has: (1) made available to the public at least ten days prior to its public hearing, data supporting the reasonableness of the Revised Drainage Impact Fee; (2) mailed notice at least fourteen days prior to the public hearing to all interested parties who have requested notice of new or increased fees; (3) published notice two times in a newspaper of general circulation at least ten days prior to the public hearing; and (4) held a duly noticed, regularly scheduled, public hearing at which oral and written testimony were received regarding the Revised Drainage Impact Fee; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Lafayette hereby approves the Drainage Impact Fee Report prepared by Siefel Consulting, Inc. the City of Lafayette, dated _____ (the "Drainage Impact Fee Report"), as well as the facilities and cost estimates identified in the Drainage Master Plan, dated _____, 1998, (the "Drainage Master

Plan"), and the Master CIP Storm Drain Priority Report, dated, April 17, 2007 (the "Storm Drain Priority Report.") The Drainage Impact Fee Report, Drainage Master Plan, and Storm Drain Priority Report are hereby incorporated by this reference for the purpose of supporting the below findings pursuant to California Government Code Section 66001, and further substantiating the Revised Drainage Impact Fee.

Section 2. Findings. Pursuant to California Government Code Section 66000 et seq., the City Council hereby finds and determines as follows with respect to the Revised Drainage Impact Fees:

a. The above recitals are true and correct and adopted by the City Council as if its own; and

b. The Drainage Impact Fee Report, Drainage Master Plan, and Storm Drain Priority Report satisfy the requirements of Government Code Section 66001, because they: (1) identify the purpose of the Revised Drainage Impact Fee; (2) identify the use to which the Revised Drainage Impact Fee will be put and the facilities for which the Fee is charged; (3) identify how the need for the Revised Drainage Impact Fee and the Fee's use bear a reasonable relationship to the type of development project on which the Fee is imposed; and (4) demonstrate that there is a reasonable relationship between the amount of the Revised Drainage Impact Fee imposed on new development and the cost of drainage facilities attributable to new development;

Section 3. Amendments.

Section 8-1701 through 8-1707 of the Lafayette Municipal Code is hereby amended to read as follows:

"8-1702 Definitions.

In this chapter, unless the context otherwise requires:

(a) "Drainage system" means and includes watershed areas and improved and unimproved drainageways in the city. The term "drainage system" is broadly based and may include areas and facilities which are private or under the jurisdiction of the Contra Costa County flood control district for which the city is not legally responsible.

(b) "Drainage system study" means a survey and mapping of the existing drainage system, development of a master drainage plan and an evaluation of: the present capacity of the system; the state of repair of improvements; the capacity and facilities needed to accommodate drainage in the future; and the potential impact of new development on erosion. A study may be done in phases.

(c) "Drainage program costs" means and includes the total cost of infrastructure facilities that the City anticipates would be needed to meet the needs of existing and future users as identified in the city's most current Storm Drain Priority Report and estimated future costs not yet contemplated by the Storm Drain Priority Report, including additional infrastructure and annual inspections.

(d) "New development" means and includes construction of or an addition to a residential or commercial structure or facility, including a driveway, parking area, sports court or swimming pool, or any other construction which may affect the area of impervious surface of the land.

8-1703 Fee imposed--Amount.

A person who applies for a permit for new development shall pay to the city a drainage impact fee based upon the proposed increase in impervious surface of the new development in an amount established by resolution of the city council. **8-1704 Time of payment.**

(a) the drainage impact fee shall be paid to the city before a person may begin new development. If the new development requires a building permit or grading permit, the drainage fee shall be paid before issuance of the permit. Neither a Contra Costa County nor a city official may issue a building or grading permit until the required fee is paid.

8-1705 Exemptions.

The drainage impact fee is not required if the proposed new development:

(a) Is to replace a structure if the proposed structure has the same as or less impervious surface than the original structure;

(b) Is located within Contra Costa County flood control district drainage area 15 or proposed drainage areas 46 or 67;

(c) Involves an increase of impervious surface of less than 100 square feet; or

(d) Rebuilds a dwelling unit damaged or destroyed by act of God, fire or other natural disaster, if the permit to rebuild is applied for by the owner within one year of the damage or destruction caused by the natural disaster. If the impervious surface area of the new unit exceeds that of the unit destroyed or damaged, then the owner shall pay the fee as if the increased area were an addition.

(e) This chapter does not apply to commercial or industrial subdivisions; nor does it apply to condominium projects or stock cooperatives, which consist of the subdivision of airspace in an existing apartment building if that building is more than five years old and no new dwelling units are added.

8-1706 Creation of fund; fund administration and disposition of proceeds.

(a) There is created a fund entitled "drainage impact fund." The proceeds from the drainage impact fee and interest collected under this chapter shall be paid only into this fund and shall be accounted for by the city manager until committed by the city.

(b) The drainage impact fund shall be used only for the purpose of defraying the cost of improving currently-existing drainage facilities and infrastructure and designing and constructing future drainage facilities and infrastructure pursuant to the most current Drainage Master Plan and Storm Drain Priority Report, as a result of the demand on the system created by new development, and studies related to the same.

(b) The city may advance money from its general fund to pay the cost of drainage system maintenance and expansion necessitated by new development and reimburse the general fund for such advances from the drainage impact fund.

8-1707 Refund.

The fee paid under this chapter shall be refunded on application of the fee payer if the payer shows to the satisfaction of the planning director that the new development did not occur and that the building permit is canceled, surrendered or expired.

8-1708 Refunds of uncommitted drainage impact fees.

(a) Drainage impact fees collected under this chapter shall be committed within five years after the payment of such fees or the issuance of building permits on one-half of the lots created by a subdivision, whichever occurs later. If such fees are not so committed, the uncommitted portion of the drainage impact fee, and any interest accrued thereon, shall be distributed among the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis. For the purpose of this chapter, "committed" means that the fees have been encumbered by contract, conveyed, paid or allocated through the city council's adoption of a budget, for an identified drainage project or activity within the scope of Section 8-1706.

(b) Except when administrative costs of refunding the unexpended revenues exceed the amount to be refunded,

when sufficient funds have been collected as provided for in the Mitigation Fee Act, Section 66006(b)(1)(F) of the Government Code, to complete financing on incomplete city drainage facilities and the drainage facilities remain incomplete, the city shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the acquisition and installation of the drainage facilities will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the drainage impact fee, and any interest accrued thereon.

8-1709 Supplemental regulations.

The city council shall adopt regulations to establish fees, administration, procedures, implementation, interpretation and policy considered necessary or desirable to carry out this chapter by resolution.

8-1710 Standards and formula for calculation.

The standards and formula for setting the drainage impact fee shall be set forth by resolution.

8-1711 Administration fee.

An administration fee shall be charged to cover the costs associated with administering the drainage impact fee program. The administration fee shall be paid in conjunction, and at the same time, with the payment of fees as provided in this chapter. This administration fee shall be established by resolution of the city council."

Section 4. CEQA. The City Council finds that pursuant to Section 21080(b)(8) of the Public Resources Code, the California Environmental Quality Act ("CEQA") is not applicable this Ordinance because the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by this Ordinance are for the purpose of obtaining funds for capital projects, necessary to maintain service within existing service areas and/or service areas within the City.

Section 5. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this Ordinance.

Section 6. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 8. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on May 11, 2009 and was adopted and ordered published at a meeting of the City Council held on May 26, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:

ABSENT:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Don Tatzin, Mayor